



1 (Proceedings commenced at 10:05 a.m., in open court,  
2 outside the presence of the jury, to wit:)

3 THE COURT: Good morning. You can all be seated.

4 THE COURTROOM DEPUTY: Civil cause on trial, Docket  
5 18-CV-5244, *Semencic v. County of Nassau, et al.*

6 Can the parties please state their appearances for  
7 the record, starting with the plaintiff.

8 MR. STAPLETON: Brian Stapleton, Law Office of Brian  
9 Stapleton.

10 Good morning, Your Honor.

11 THE COURT: Good morning.

12 MR. CARNEVALE: John Carnevale for the defendants.

13 Good morning, Your Honor.

14 THE COURT: Good morning.

15 MR. COSTELLO: Good morning, Your Honor.

16 Robert Costello, Nassau County Attorney's Office.

17 THE COURT: Good morning.

18 All right. I understand tech is set, witnesses are  
19 here, and we are ready to go.

20 I have the stipulated facts that we discussed  
21 yesterday that I will start by reading to the jury. Anything  
22 to take up before we call them in?

23 All right. Let's go ahead and bring in the jurors.  
24 Thank you.

25 (Jury enters the courtroom.)

1 THE COURT: Everyone be seated, please.

2 All right. Good morning, jurors. We are ready to  
3 get started.

4 Before we bring in our next witness, I am going to  
5 read to you a stipulation from the parties. As I mentioned to  
6 you in my preliminary instructions, stipulated facts are facts  
7 to which the parties have agreed. You should accept them as  
8 true. But whatever weight you choose to give or not give  
9 these facts in your ultimate deliberations is up to you.

10 So here is the stipulation that I am reading into  
11 the record:

12 On February 4, 2020, the Honorable Sandra Feuerstein  
13 ordered the codefendants to return all of plaintiff's  
14 confiscated firearms to Dr. Semencic within 30 days.

15 The codefendants failed to comply with this order.

16 All right. Mr. Stapleton, who is your next witness?

17 MR. STAPLETON: Officer Robert McGrory.

18 THE COURT: Great. Can we bring in Mr. McGrory.

19 Thank you.

20 (Witness enters the courtroom.)

21 THE COURT: Come over here, sir. I'll have you  
22 stand right over there, and we will get you sworn in.

23 THE COURTROOM DEPUTY: Please raise your right hand.

24 (Witness duly sworn.)

25 THE COURTROOM DEPUTY: Please take a seat and state

1 and spell your name for the record.

2 THE COURT: You can pull the microphone over to you,  
3 sir. Thank you.

4 THE COURTROOM DEPUTY: Officer Robert McGrory.  
5 M-c-G-r-o-r-y.

6 THE COURT: All right. Ready to proceed?

7 MR. STAPLETON: Yes.

8 ROBERT McGRORY,  
9 called as a witness herein by the Plaintiff, having been first  
10 duly sworn, was examined and testified as follows:

11 DIRECT EXAMINATION

12 BY MR. STAPLETON:

13 Q Good morning, Officer McGrory.

14 A Good morning.

15 Q Are you currently employed?

16 A Yes.

17 Q By whom are you employed?

18 A Nassau County Police Department.

19 Q How long have you been employed with the Nassau County  
20 PD?

21 A I'm in my 26th year.

22 Q Were you working for the Nassau County police department  
23 on the evening of July 19, 2016?

24 A Yes, I was.

25 Q What was your assignment on this particular evening?

1 A I worked plainclothes back then.

2 Q Did you have a partner that night?

3 A Yes.

4 Q And what was that partner's name?

5 A Kenneth Magnuson.

6 Q Were you and Officer Magnuson in a marked car or an  
7 unmarked car that evening?

8 A Unmarked.

9 Q Were you driving the car, Officer?

10 A Most likely, yes.

11 Q At some point in time on that night, did you respond to a  
12 radio call regarding a fireman being menaced with gun at 527  
13 Dogwood Avenue?

14 A Yes, I did.

15 Q Do you know who it was that actually made the call to  
16 911?

17 A No, I do not.

18 Q After receiving the call, you headed straight to Dogwood  
19 Avenue, correct?

20 A Yes.

21 Q Do you recall how much time it took you to drive from  
22 wherever you were when you first heard the call over to  
23 Dogwood Avenue?

24 A Probably a few minutes.

25 Q When you got to the location, where did you park your

1 car?

2 A I believe we stopped on a corner before the actual house.

3 Q Would that be the corner of Buxton and Dogwood?

4 A I believe that's correct, yes.

5 Q By the time you arrived at this location, there was a  
6 group of police officers already there; is that right?

7 A That's correct.

8 Q Was an officer Phillip Cowcer there?

9 A Yes.

10 Q Was an officer named Muller there?

11 A Yes.

12 Q I'm going to screw this up, but was an officer named  
13 Theodoropoulos there?

14 A You said it perfect. Yes.

15 Q Was an officer named McEvoy there?

16 A Yes.

17 Q Was Frank DiConza already there?

18 A Yes.

19 Q And did Lieutenant Mayser Aljader eventually arrive at  
20 the scene?

21 A Yes, he did.

22 Q Was he there when you got there or did he come later?

23 A He came later.

24 Q Now, Lieutenant Aljader, he was the supervising officer;  
25 is that right?

1 A That's correct.

2 Q Now, does that mean that he was the officer in charge,  
3 ultimately in charge of the investigation?

4 A Once he gets there, yes.

5 Q But until he gets there, there's no one officer that's in  
6 charge; is that right?

7 A That's correct.

8 Q When you got there, the complainant, Daniel Maloney, was  
9 also present; is that right?

10 A I believe so, yes.

11 Q Did you speak with Daniel Maloney?

12 A No, I did not.

13 Q Were there other Franklin Square and Munson fire  
14 department firefighters there when you arrived?

15 A Yes.

16 Q Do you know their names?

17 A No.

18 Q Did you speak to those other Franklin Square and Munson  
19 fire department firefighters?

20 A No.

21 Q When you got there and you parked your car, did there  
22 come a time when you got out of your car?

23 A Yes.

24 Q And did you go to the corner of Buxton and Dogwood to  
25 speak with the complainant and the other people involved?

1 A No. Never spoke to the complainant.

2 Q I understand. But did you get out of your car and go to  
3 the corner?

4 A Yes.

5 Q Did Officer Magnuson also go to the corner with you?

6 A Yes.

7 Q While you were standing on the corner and all the  
8 complainants and the other firefighters were there, did you  
9 ever learn that just prior to your arrival, my client was seen  
10 standing outside of his home on his front lawn? Did you ever  
11 learn that?

12 A No.

13 Q Now, do you know if anyone spoke to Daniel Maloney after  
14 you arrived on the corner there?

15 A I would assume someone did, yes.

16 Q Well, do you know, Officer?

17 A Yes. Someone spoke to him.

18 Q Now, after that, it was decided that you and a group of  
19 your brother officers would approach Mr. Semencic's home; is  
20 that correct?

21 A That's correct.

22 Q How much time had passed from the point in time when you  
23 arrived at the corner until you and your brother officers  
24 approached my client's house?

25 A Probably just a few minutes.



1 Q How many Nassau County police department officers were in  
2 the group that approached my client's home?

3 A At least five of us.

4 Q It was obviously you, you were there. Was Officer  
5 Magnuson there as well?

6 A Yes.

7 Q Was Officer Muller in that group?

8 A Yes.

9 Q Was Officer Cowcer in that group?

10 A Yes.

11 Q And how about Frank DiConza, was he in that group as  
12 well?

13 A Yes.

14 Q Was there anybody in the group that I haven't mentioned  
15 yet?

16 A No.

17 Q Now, on July 19, 2016, was it your practice in situations  
18 involving a man with a firearm inside a house, and you don't  
19 know where that man is inside the house, that you try and  
20 figure out where the man is before you engage him in the  
21 house?

22 A Not always, no.

23 Q Prior to your approaching this house, did either you or  
24 any of your brother officers make any effort to determine  
25 where the plaintiff was in his house before you went up to the

1 door?

2 A Not that I know of.

3 Q Did you or any of your brother officers look in the  
4 windows of the house to try and figure out where Mr. Semencic  
5 was or what he might be doing?

6 A Not that I know of, no.

7 Q Did you or any of the other officers in your group shine  
8 your flashlights into the windows of the house to try and see  
9 where my client was before you knocked on the door?

10 A No.

11 Q Do you recall the time it was when you and your brother  
12 officers approached the front door?

13 A No, I do not.

14 Q Whatever time it was, was it still light enough out that  
15 you could see what you were doing?

16 A Yes.

17 Q You were able to observe Mr. Semencic's front door  
18 clearly as you approached it?

19 A Yes.

20 Q Officer McGrory, I am showing you what's been introduced  
21 into evidence as Plaintiff's Exhibit 4.

22 Did you have any problems seeing the sign on the  
23 front door as you approached the front door to knock on it?

24 A No.

25 Q Now, when you approached the house and arrived at the

1 front door, one of you knocked on the front door; is that  
2 correct?

3 A That's correct.

4 Q Was it you that knocked on the front door?

5 A I don't recall which one of us knocked on the front door.

6 Q Fair enough.

7 And when whoever it was knocked on the front door,  
8 my client answered the door, did he not?

9 A Yes, he did.

10 Q And when he answered the door, someone amongst you asked  
11 him to step outside; is that right?

12 A That's correct.

13 Q And after you asked my client to step outside, he agreed  
14 and he came outside; is that right?

15 A Yes.

16 Q And when he agreed to come outside, you previously  
17 testified that my client was being very compliant; do you  
18 recall that?

19 A He was compliant, yes.

20 Q Did he appear to be agitated to you, when he agreed to  
21 come outside?

22 A No.

23 Q Did he need to be calmed down when he agreed to come  
24 outside?

25 A No.

1 Q Was he being rude to you?

2 A Not to me, no.

3 Q Was he using any kind of foul language or anything like  
4 that?

5 A As to that, I don't recall.

6 Q At this time, the point in time when Mr. Semencic has  
7 agreed to come outside, did you see Mr. Semencic's wife at any  
8 point in time?

9 A When he came outside?

10 Q Yes. At the door.

11 A No, I did not.

12 Q When my client came outside, did he appear to be under  
13 the influence of alcohol or drugs at that time?

14 A Alcohol, yes.

15 Q Did he look like he was drunk?

16 A No.

17 Q After Mr. Semencic came outside of his house, did he tell  
18 you what had happened between him and the fireman?

19 A Yes.

20 Q What did he say? If you remember.

21 A He said that he was -- heard the knock at the door, he  
22 said he was putting his gun away, and he heard the knock at  
23 the door, and then he answered the door, with the gun in his  
24 hand.

25 Q You said that when he talked to you, he told you he

1 heard -- he heard a knock on the door as he was putting his  
2 gun away; is that what he said?

3 A Yes.

4 Q Yes?

5 A Yes.

6 Q After Mr. Semencic told you what had happened, was a  
7 show-up identification conducted?

8 A Yes.

9 Q Where was the plaintiff when the show-up ID happened?

10 A I believe he was sitting right on the front porch.

11 Q And when that show-up ID occurred, where were you,  
12 Officer?

13 A Standing next to him.

14 Q Were there any other police officers besides yourself  
15 standing next to my client when he was subject to this show-up  
16 identification?

17 A I believe Officer Cowcer was next to him, also.

18 Q Do you recall, Officer McGrory, and I know it's been a  
19 long time, but do you recall when that show-up occurred, was  
20 my client in handcuffs?

21 A No, he was not.

22 Q To be clear, your testimony is that Mr. Semencic was not  
23 placed in handcuffs until he was outside of his house?

24 A That is correct.

25 Q And, in fact, he was placed in handcuffs, according to

1 you, after the show-up identification occurred, correct?

2 A Yes.

3 Q At that point in time, he was placed under arrest?

4 A After the positive show-up, he was walked to our car and  
5 placed in handcuffs right outside of our car.

6 Q Thank you very much.

7 Now, at that point in time, Officer McGrory, did you  
8 notice whether a crowd of onlookers had gathered at this scene  
9 to see what was going on?

10 A No, I did not.

11 Q You did not notice or there were none?

12 A I did not notice.

13 Q Thank you very much.

14 When Mr. Semencic was handcuffed, did you or any of  
15 your brother officers read him his Miranda rights?

16 A No, we did not.

17 Q The vehicle that you brought him to, where was that car  
18 located?

19 A It was parked by his driveway in front of the house on  
20 Dogwood Avenue.

21 Q Did the vehicle -- was that the vehicle that you and your  
22 brother officer came over in?

23 A I believe so, yes.

24 Q That vehicle had emergency lights on it, did it not?

25 A Yes.

1 Q I called them turret lights, but I've heard them called  
2 emergency lights.

3 Were those emergency lights activated when he was  
4 put in the back of the car?

5 A No.

6 Q Did there come a time after Mr. Semencic was placed in  
7 the back of the police car when the handgun involved in this  
8 case was recovered?

9 A Yes.

10 Q Who recovered it, if you can recall?

11 A I believe Officer Muller recovered that weapon.

12 Q Where was the handgun recovered from?

13 A Inside the house.

14 Q Do you know where inside the house the handgun was found?

15 A I believe it was in his nightstand.

16 Q His nightstand in his bedroom?

17 A I believe so, yes.

18 Q Thank you.

19 Did you have any role in the recovery of that  
20 firearm?

21 A No.

22 Q Did there come a time after Mr. Semencic was placed in  
23 the back of your car, in handcuffs, that a firearm permit was  
24 recovered from his home?

25 A Yes, there was.

1 Q Do you know where that firearm permit was found?

2 A That I do not.

3 Q Fair enough.

4 Did you have any role in the recovery of the firearm  
5 permit?

6 A No.

7 Q Did there come a time when a search of my client's home  
8 was conducted?

9 A A search of the basement, yes.

10 Q Okay. Did that search occur before or after Mr. Semencic  
11 was handcuffed and placed into the back of the car?

12 A After.

13 Q Who ordered that search?

14 A I believe our now lieutenant, but Sergeant Aljader.

15 Q Just to be clear --

16 A Yes.

17 Q Just --

18 A Sergeant Aljader.

19 Q Thank you. Thank you.

20 Now Mr. Aljader enjoys the rank of lieutenant,  
21 correct?

22 A That is correct.

23 Q But back then, on July 19 of 2016, Mr. Aljader was a  
24 sergeant, right?

25 A Yes.



1 Q Okay. So it was then Sergeant Aljader who ordered the  
2 search of my client's house?

3 A Of the basement.

4 Q Of the basement. You took the next question out of my  
5 mouth.

6 What part of my client's house was searched?

7 A The basement.

8 Q And your testimony is, it was just the basement of his  
9 house that was searched; yes?

10 A When I was in there, yes.

11 Q At the time the search was ordered, had you or any of  
12 your brother officers or Sergeant Aljader obtained a warrant  
13 authorizing you to search his home?

14 A No.

15 Q At any point in time before that search was conducted,  
16 did you or your brother officers or Sergeant Aljader ever  
17 obtain Mr. Semencic's permission to search his basement safe?

18 A Yes.

19 Q You did? And where was that -- when was that consent  
20 obtained?

21 A In the back of our police car.

22 Q Who obtained the consent?

23 A I do not recall who got that.

24 Q Your role in the search of the basement was bringing my  
25 client into the basement to open the safe, correct?

1 A Yes.

2 Q Now, why did you have to bring Mr. Semencic down to the  
3 basement?

4 A In the car, he gave us codes or gave other officers the  
5 codes to the safe, and they couldn't get it open.

6 Q What happened after they couldn't get it open?

7 A We brought him in the house and he opened it.

8 Q Now, I just want to make sure I understand this  
9 correctly. He's in the back of the car, he -- your testimony  
10 is he gives you -- did he give the codes to you or did he give  
11 it to somebody else?

12 A He gave it to somebody else.

13 Q Were you there when he did it?

14 A Yes.

15 Q Okay. So my client's in the back of the car, he gives  
16 the codes to one of your brother officers, and I guess that  
17 brother officer went back inside and then tried to open the  
18 safe; is that right?

19 A That's correct.

20 Q And you weren't there when that was happening, were you?

21 A No.

22 Q So did there come a time when one of your brother  
23 officers came back outside and told Mr. Semencic that they  
24 couldn't get the safe open? Is that how that worked?

25 A That's correct.

1 Q And it was at that point in time that my client offered  
2 to open the safe himself?

3 A Yes, he did.

4 Q Were you there when he made that offer?

5 A Yes.

6 Q Did you hear him making that offer?

7 A Yes.

8 Q Do you know the name of the police officer who came back  
9 out to advise that the couldn't use the codes to get the  
10 safe open?

11 A No, I do not remember.

12 Q Okay. At any point in time during that conversation  
13 between the other officer and my client, did anyone threaten  
14 my client that if he didn't open the safe, the safe would be  
15 broken?

16 A No.

17 Q Now, the safe in the basement was fairly large; is that  
18 correct?

19 A That is correct.

20 Q All right. I just need to show you one more exhibit,  
21 sir. Sorry.

22 (Short pause; IT personnel enter the courtroom.)

23 THE COURT: Ladies and gentlemen, they are just  
24 re-setting one thing in my system that helps me follow the  
25 testimony, but if it gets disruptive, we'll stop. So you all

1 can keep your focus on the witness and counsel while we take  
2 care of this. Thank you.

3 Q Showing you now, Officer McGrory, what's been admitted  
4 into evidence as Plaintiff's Exhibit 12.

5 Have you seen this document before?

6 A Yes.

7 Q And what is this document?

8 A I have to take my glasses out for that.

9 Q Try to zoom in on it so you can see.

10 A I think that makes it worse. Okay.

11 Q Can you see it, Officer McGrory?

12 A Yes. It's our district court information.

13 Q And what is a district court information?

14 A It explains the crime.

15 Q And is this your signature at the bottom on the left?

16 A That is correct.

17 Q And this is a sworn document. This was a sworn -- you  
18 swore this out in front of Lieutenant Brian J. Colletti; is  
19 that correct?

20 A That is correct.

21 Q Officer McGrory, what happens to informations like the  
22 one -- like this one? What happens to these after you sign  
23 them? Where do they go?

24 A They go with the arrestee to headquarters.

25 Q And do they eventually get forwarded to the Nassau County

1 District Attorney's Office?

2 A Yes.

3 Q And so these informations, these are the things that  
4 start the criminal process -- started the criminal process  
5 against my client, correct?

6 A Correct.

7 Q Thank you, Officer McGrory.

8 MR. STAPLETON: I have no further questions.

9 THE COURT: Okay.

10 Cross?

11 CROSS-EXAMINATION

12 BY MR. CARNEVALE:

13 Q Good morning, Officer McGrory.

14 A Good morning.

15 Q I am just going to ask you a couple follow-up questions  
16 in addition to the ones Mr. Stapleton asked you.

17 So on the evening of July 19 of 2016, what time did  
18 you arrive, approximately, at 527 Dogwood Avenue?

19 A A few minutes after the call came out.

20 Q And you were in a car with your partner, Officer  
21 Magnuson; is that correct?

22 A That is correct.

23 Q And that evening you were assigned as plainclothes  
24 officers?

25 A Yes.

1 Q Is it typically the practice that plainclothes officers  
2 respond to calls of firearm crimes?

3 A Yes.

4 Q Because that's a serious crime that's being reported?

5 A We respond to all the more serious crimes, correct.

6 Q And how did you receive that call to respond to 527  
7 Dogwood Avenue?

8 A It comes over our police radios.

9 Q And that police radio is only a police frequency, it's  
10 not shared with any other agencies, is it?

11 A No, it is not.

12 Q The fire department doesn't have access to that radio,  
13 does it?

14 A No, they do not.

15 Q So the information you received was from someone at  
16 police dispatch; is that correct?

17 A Our 911 dispatch, yes.

18 Q And when you arrived, if you remember, where did you park  
19 your car?

20 A We stopped on the corner, I was advised, Buxton and  
21 Dogwood, where other officers were.

22 Q A few houses away from the location of 527 Dogwood?

23 A That is correct.

24 Q And once you arrived, were you aware at that point that  
25 the individual, the plaintiff in this case, had a firearm

1 license?

2 A No.

3 Q Would you or another officer be able to get that  
4 information from the precinct before you arrived?

5 A Not normally, no.

6 Q Does the police department keep records of people who  
7 have firearm permits?

8 A Yes.

9 Q And after you arrived, a few minutes past until you  
10 actually went up to the house, right?

11 A That is correct.

12 Q And you were not the only officer that went up to the  
13 house?

14 A No.

15 Q And although you knew a firearm was involved at the  
16 location, did you search the premise before you started  
17 approaching the front of the house?

18 A No, we did not.

19 Q Did you go in the backyard and look around?

20 A No.

21 Q Did you look in the windows in the front of the house?

22 A No.

23 Q After you were at the front door, the individual known as  
24 Mr. Carl Semencic came outside; is that right?

25 A That is correct.

1 Q And once he came outside, you were speaking with him?

2 A Yes.

3 Q And maybe not you directly, but he was speaking with  
4 other officers as well?

5 A Yes.

6 Q And he acknowledged that he is the owner of the firearm  
7 that was involved in the incident?

8 A That is correct.

9 Q And he told you he menaced the firearm?

10 MR. STAPLETON: Objection, Your Honor.

11 THE COURT: Sustained.

12 Please don't use legal terminology in your  
13 questions. You can ask him what he recalls, if anything, that  
14 Mr. Semencic said or didn't say.

15 Q Did Mr. Semencic tell you he had a firearm with him?

16 MR. STAPLETON: Objection. Asked and answered.

17 THE COURT: Overruled. It's okay. You can lay the  
18 foundation. Just specify the time.

19 Q When Mr. Semencic was speaking with officers at the front  
20 door, did you learn that he had a firearm with him?

21 A Yes.

22 Q And is it a crime to menace a firearm?

23 MR. STAPLETON: Objection, Your Honor.

24 THE COURT: Sir, I have asked you a couple times,  
25 okay? Please don't use the word "menacing." That's an



1 element for the jury to decide. You can elicit the facts from  
2 which you wish to argue that they had probable cause to arrest  
3 him for menacing, but you cannot use that word in your  
4 question.

5 Q At some point, a firearm was recovered from  
6 Mr. Semencic's residence; is that correct?

7 A Yes.

8 Q And one of those firearms recovered was a Glock pistol;  
9 is that right?

10 A That is correct.

11 Q And how did you or other officers come to learn where  
12 that Glock pistol was?

13 A Mr. Semencic, if I said it right, told us where it was.

14 Q Did he offer to go get it for you from within the house?

15 A I don't recall if he offered.

16 Q Did he tell you that he pulled that gun on someone?

17 MR. STAPLETON: Objection, Your Honor.

18 THE COURT: Overruled.

19 You can answer, if you know.

20 A Not that he pulled it, no.

21 Q And it is -- but it is a crime to pull --

22 MR. STAPLETON: Objection, Your Honor.

23 THE COURT: Sustained.

24 Q Okay. Did you eventually recover additional firearms  
25 from the residence?

1 A Yes.

2 Q And how did you come to learn the location of those  
3 additional firearms?

4 A From Mr. Semencic.

5 Q And where were those additional firearms?

6 A In a safe in his basement.

7 Q Do you remember how many other firearms it was?

8 A No, I do not.

9 Q Would you say it was more than ten?

10 A Yes.

11 Q More than 20?

12 A There were quite a few. So, yes, possibly.

13 Q And you previously testified that you didn't search the  
14 whole home; is that correct?

15 A That is correct.

16 Q You only searched the basement?

17 A The safe is in the basement, yes.

18 Q And you went down there because that's where Mr. Semencic  
19 told you where the guns were?

20 A Yes.

21 Q In the basement, where were the guns?

22 A Inside of the safe.

23 Q And did you open that safe?

24 A No.

25 Q How did you get into the safe?

1 A Mr. Semencic had to open it for us.

2 Q And did -- withdrawn.

3 Do you remember what the locking mechanism on that  
4 safe was? Was it a keypad or something else?

5 A I don't recall.

6 Q And after he opened it, is that the point where officers  
7 retrieved the guns?

8 A Yes.

9 Q And eventually Mr. Semencic was placed under arrest?

10 A Yes.

11 Q And he was placed in handcuffs?

12 A Yes.

13 Q When he was placed in handcuffs, that was outside of his  
14 house; is that right?

15 A That is correct.

16 Q Was he placed in handcuffs outside of your car or another  
17 officer's car?

18 A Outside of my car.

19 Q And was he eventually taken to the police precinct?

20 A Yes.

21 Q Did you drive him to the police precinct?

22 A Yes.

23 Q At the police precinct, did you ask him any questions  
24 about his health?

25 A Yes.

1 Q Did he appear to be in good health?

2 A Yes.

3 Q He didn't have any visibly apparent injuries?

4 A No.

5 Q Did he ever ask you or another officer at the precinct  
6 that he needed medical attention?

7 A No.

8 Q And did you complete any forms at the precinct?

9 A Yes.

10 Q Did one of these forms include an arrest report?

11 A Yes.

12 Q And in that arrest report, you documented what you knew  
13 about the case?

14 A Yes.

15 Q And at any point during this interaction, did you punch  
16 Mr. Semencic?

17 A No.

18 Q Did he resist arrest at all?

19 A No.

20 Q In fact, he was fully cooperative the whole time?

21 A Yes.

22 Q Okay. Thank you.

23 MR. CARNEVALE: I have no further questions.

24 THE COURT: Any redirect?

25 MR. STAPLETON: Nothing further.

1 THE COURT: All right. Officer McGrory, you are  
2 excused. Thank you for being here.

3 And plaintiff can call his next witness.

4 (Witness excused.)

5 MR. STAPLETON: Your Honor, our next witness is  
6 Lieutenant Mayser Aljader.

7 (Witness enters the courtroom.)

8 THE COURT: Okay. You can stand right there, and  
9 we'll get you sworn in and begin.

10 THE COURTROOM DEPUTY: Please raise your right hand.

11 (Witness duly sworn.)

12 THE COURTROOM DEPUTY: Please take a seat and state  
13 and spell your name for the record.

14 THE WITNESS: Lieutenant Mayser Aljader.

15 M-a-y-s-e-r, A-l-j-a-d-e-r.

16 THE COURT REPORTER: e-r?

17 THE WITNESS: e-r.

18 MR. STAPLETON: May I inquire?

19 THE COURT: Yes.

20 MAYSER ALJADER,

21 called as a witness herein by the Plaintiff, having been first  
22 duly sworn, was examined and testified as follows:

23 DIRECT EXAMINATION

24 BY MR. STAPLETON:

25 Q Lieutenant Aljader, good morning.

1 Are you currently employed?

2 A Yes.

3 Q Who are you employed by?

4 A Nassau County police department.

5 Q How long have you been employed by the Nassau County  
6 police department?

7 A A little over 20 years.

8 Q You were working for the Nassau County police department  
9 on the evening of July 19, 2016, correct?

10 A Yes.

11 Q What was your assignment on that particular evening?

12 A I was a 5th Precinct patrol supervisor.

13 Q Now, you currently enjoy the title of lieutenant; is that  
14 correct?

15 A Yes.

16 Q On that evening, were you a sergeant or a lieutenant?

17 A I was a sergeant.

18 Q Now, were you in plainclothes or were you in uniform?

19 A I was in uniform.

20 Q Did you have a partner that night?

21 A No.

22 Q At some point in time on that night, did you respond to a  
23 radio call regarding a fireman being menaced with a gun at 527  
24 Dogwood Avenue?

25 A Yes.

1 Q After receiving the call, did you head straight over to  
2 Dogwood Avenue?

3 A Yes. I don't know if I received it or I just responded  
4 to it by hearing it.

5 Q I didn't mean to mischaracterize it. After learning of  
6 this call --

7 A Yes.

8 Q -- did you go over to 527 Dogwood Avenue?

9 A Yes.

10 Q Do you recall how much time it took you to drive over  
11 there?

12 A I don't recall the location I was at for me to -- and how  
13 long it took me to get there, no.

14 Q Fair enough.

15 When you got there, where did you park your car?

16 A On the street somewhere.

17 Q Was it near my client's home, do you recall?

18 A Close proximity, and I don't know if it was in front of  
19 it or not.

20 Q By the time you arrived at this location, there were a  
21 number of your brother officers already there; is that right?

22 A Yes.

23 Q Kenneth Magnuson was there, correct?

24 A Yes, I believe so.

25 Q Phillip Cowcer was also there?

1 A Yes.

2 Q And an officer named Muller, I forget his first name.

3 What is his name?

4 A Trying to think.

5 Rich. Richard Muller.

6 Q Was Richard Muller there?

7 A Yes, I believe so.

8 Q Was an officer named Theodoropoulos there?

9 A Yes.

10 Q Was Kevin McEvoy there?

11 A Yes.

12 Q Was Robert McGrory there?

13 A Yes.

14 Q And was Officer Joseph DiConza also present?

15 A Yes.

16 Q Now, you were the officer in charge of this investigation  
17 or supervising this investigation; is that right?

18 A Correct.

19 Q After you arrived, you spoke to a number of your brother  
20 officers, did you not?

21 A Yes.

22 Q And this conversation took place in front of my client's  
23 home; is that right?

24 A Yes.

25 Q During that conversation, those officers brought you up



1 to speed on what had happened before you got there; is that  
2 fair to say?

3 A Yes.

4 Q Now, in situations where the police are told there's a  
5 man with a gun inside a house, and the police don't know where  
6 that man is, would you expect those officers to try and figure  
7 out where that man was before they approached the house?

8 A Officer responding to a scene with a man with a gun, they  
9 are going to be thinking the whole way getting there.

10 Q Do you know if that happened in this case?

11 A I don't know what their mindset was.

12 Q Well, no, no, I don't mean -- I am not inquiring about  
13 the mindset, and I didn't mean to suggest I was. But when you  
14 spoke to the officers who were bringing you up to speed --

15 A Right.

16 Q -- did they tell you that before they went up to my  
17 client's front door, that they looked around his house to try  
18 and figure out where he was?

19 A I don't think that was ever questioned or -- no.

20 Q When you got there, Lieutenant, did you interview a man  
21 named Daniel Maloney?

22 A No.

23 Q By the time you had arrived, had the show-up  
24 identification already happened?

25 A I believe so, yes.

1 Q And by the time you arrived, Mr. Semencic had already  
2 been taken into custody?

3 A Yes. He was in our custody, yes.

4 Q Lieutenant, we've heard a lot of testimony about brother  
5 officers going to the front door and speaking with  
6 Mr. Semencic there.

7 That had already happened by the time you got there,  
8 correct?

9 A Correct.

10 Q When you first saw Mr. Semencic, where was he?

11 A Outside the house.

12 Q Was he seated in front of his house or was he in the back  
13 of a police car?

14 A I don't believe he was in the back of the police car.

15 Q All right. He hadn't been put --

16 A I don't know if he was sitting or not. I don't remember.  
17 But I know it was in front of the house.

18 Q So when you first saw him, though, he wasn't in the back  
19 of the car?

20 A No.

21 Q Did you speak to him at that time?

22 A I believe I was speaking to the officers first.

23 Q Well, did there come a time when you did speak to him?

24 A Yes.

25 Q When you spoke to my client, did he appear to be under

1 the influence of alcohol or drugs?

2 A I don't recall that.

3 Q Did there come a time when Mr. Semencic was placed into  
4 the back of a police car?

5 A Yes.

6 Q Did you have any role in putting him in the back of the  
7 car?

8 A No.

9 Q Did there come a time after Mr. Semencic was in the back  
10 of the police car when the handgun involved in this case was  
11 recovered?

12 A I don't know when it was recovered. I believe it was  
13 recovered earlier before that.

14 Q Okay. So by the time you got there, the handgun had  
15 already been found?

16 A I believe so.

17 Q Fair enough.

18 Do you know who found it?

19 A Just from the paperwork --

20 Q And who was it?

21 A -- that I read.

22 I believe it was Officer Muller.

23 Q Do you know from your review of the paperwork where  
24 Officer Muller found that handgun?

25 A I believe it was in his bedroom.

1 Q Do you know where it was? And I know this was a long  
2 time ago, but do you know from reviewing the paperwork where  
3 it was found?

4 A Yeah. Just from reviewing the paperwork, it was in a  
5 nightstand.

6 Q Did there come a time after Mr. Semencic was placed in  
7 the back of the police car in cuffs that a firearm permit was  
8 recovered from his home?

9 A Yes.

10 Q Do you recall where that firearm permit was found?

11 A I'm pretty sure it was in a safe.

12 Q Did you have any role in the recovery of that firearm  
13 permit, or had it already been recovered by the --

14 A No, the permit, yeah, I was down there when they  
15 recovered it.

16 Q All right. The firearm permit, that was found in the  
17 basement safe?

18 A My recollection, I thought that's where it was. That's  
19 why we wanted to get in there, in the safe.

20 Q Did there come a time when a search of my client's home  
21 was conducted?

22 A No.

23 Q Did there come a time when a search of my client's  
24 basement was conducted?

25 A Not the basement. Just we walked down there with him.

1 Q And what was your purpose in going down into the basement  
2 with my client?

3 A To get the permit from the safe.

4 Q All right. Now, did you order a search of the safe in my  
5 client's basement?

6 A I didn't order a search. It was a consent search from  
7 him. He consented to it.

8 Q So at no point in time was a warrant obtained before that  
9 safe was opened; fair?

10 A Correct.

11 Q Did you take part in the search of the basement safe?

12 A I was there. I didn't take --

13 Q You didn't actually take the guns out yourself?

14 A No.

15 Q As the supervisor, that wasn't your job?

16 A That's not my role, no.

17 Q Got you.

18 How many officers were involved in the search of the  
19 safe?

20 A I don't recall the exact number. It had to be at least  
21 three or four, including me.

22 Q Was Kenneth Magnuson down there?

23 A I don't recall exactly who was down there with me.

24 Q Was Robert McGrory?

25 A I don't recall. Like I said, I don't know who -- this is

1 nine years ago.

2 Q Do you remember what you had for breakfast yesterday?

3 A No. I don't have breakfast, so.

4 Q All right.

5 THE COURT: So you do remember. Just kidding.

6 THE WITNESS: I don't eat breakfast.

7 Q All right. Now, were you or your brother officers able  
8 to get that safe open on your own?

9 A No.

10 Q Is that why Mr. Semencic was brought down?

11 A Correct.

12 Q All right. Did Mr. Semencic ever tell you or your  
13 brother officers what the combination to the basement safe was  
14 before he was brought down?

15 A I believe he did.

16 Q And were you and your brother officers or your brother  
17 officers able to get the safe door open using the combination?

18 A I wasn't down there, no. I believe two of them tried to  
19 open it and they couldn't, and they came back upstairs.

20 Q And that's why Mr. Semencic was brought in?

21 A Correct.

22 Q Very good.

23 Was Mr. Semencic eventually removed from the scene  
24 to the 5th Precinct?

25 A Yes.

1 Q Thank you.

2 MR. STAPLETON: I have no further questions.

3 THE COURT: All right. Cross?

4 MR. CARNEVALE: Yes.

5 CROSS-EXAMINATION

6 BY MR. CARNEVALE:

7 Q Good morning, Lieutenant.

8 A Good morning.

9 Q So when you arrived at 527 Dogwood Avenue, you were a  
10 sergeant at the time, right?

11 A Correct.

12 Q And that's a supervisor role?

13 A Correct.

14 Q So your role is different from that of a typical  
15 responding officer; is that right?

16 A Correct. When I am second to a scene. If I'm first at  
17 the scene, it is going to be the same thing. But at that  
18 point it was already -- the scene was already involved, an  
19 investigation was already started.

20 Q And at the point you arrived, you learned that your  
21 officers had already spoken to the complaining witness,  
22 Mr. Daniel Maloney; is that right?

23 A Correct.

24 Q And you also learned that Mr. Semencic volunteered the  
25 location of his Glock involved in the incident; is that right?

1 A Correct.

2 Q And the call you were responding to was for someone  
3 pulling a firearm; is that right?

4 A Correct.

5 Q And at some point did you learn that the person who  
6 pulled the firearm had a handgun permit?

7 A Yes.

8 MR. STAPLETON: Objection to the characterization  
9 "pulled a firearm," Your Honor.

10 THE COURT: Sustained.

11 You can rephrase the question.

12 The jury will disregard that question.

13 Q At some point did you learn that Mr. Semencic had a  
14 handgun permit?

15 A Yes.

16 Q But even if you have the handgun permit, it's illegal to  
17 pull a firearm on someone; is that right?

18 MR. STAPLETON: Objection, Your Honor.

19 THE COURT: Sustained.

20 Q Could you arrest someone for pulling a firearm?

21 MR. STAPLETON: Objection, Your Honor.

22 THE COURT: Let me see counsel at sidebar, briefly.

23 (Sidebar conference continues on the next page.)  
24  
25



1 (Sidebar conference had, as follows:)

2 THE COURT: Okay. So let me just state for the  
3 record the reasons why I am sustaining these objections. But  
4 you can tell me if your recollection of the testimony is  
5 different.

6 Although Mr. Maloney, who is not a defendant in this  
7 case, testified that he reported to his fire department  
8 supervisors that someone had, quote-unquote, pulled a firearm  
9 on him, there's been no factual testimony, that I recall, that  
10 any of the officers, from your questioning, were told by any  
11 person that someone had pulled a firearm on Mr. Maloney.

12 Only thing that they had been told, and you are free  
13 to argue to the jury at summation, as I trust you will, that  
14 this constituted probable cause for menacing, is that he was  
15 holding the gun in his hand when he answered the door and he  
16 tapped on the "no peddler" sign.

17 They interpreted that, I assume they will testify,  
18 to be probable cause to arrest him for menacing and for  
19 criminal possession of a weapon. But by you continuing to use  
20 a word in the predicate of your questions, namely, "pulled,"  
21 that none of the witnesses have adopted, and, in fact, the  
22 last witness said specifically they were not told, I think is  
23 improper.

24 So that is the reason why I am sustaining these  
25 objections. I don't want to call you out in front of the jury

1 repeatedly. So I wanted to bring you over here and clarify  
2 that.

3 MR. CARNEVALE: Okay.

4 MR. STAPLETON: Thank you.

5 MR. COSTELLO: Your Honor?

6 THE COURT: Yes.

7 MR. COSTELLO: It is my recollection that  
8 plaintiff's counsel has been trying to state that Mr. Maloney  
9 told people that he pointed a gun at him. Now, there's no  
10 legal difference between pointing a gun and displaying a gun  
11 for the purposes of the charge. Mr. Maloney testified that  
12 the phrase he used was "pulling a gun."

13 The only time that pointing a gun --

14 THE COURT: Well, wait.

15 Mr. Maloney testified -- Mr. Maloney, the  
16 firefighter, said that the phrase that an officer  
17 misinterpreted him as using, which he then said, was, quote,  
18 in his words, a lie, or incorrect, as he later said it, in his  
19 written statement, was pointed. But Mr. Maloney never says he  
20 never told anyone that -- Mr. Maloney said --

21 MR. COSTELLO: Right.

22 THE COURT: -- repeatedly that he never told the  
23 officers that he pointed a gun at -- that Mr. Semencic pointed  
24 a gun -- let me finish -- that he pointed a gun at anyone.

25 MR. COSTELLO: Right.

1 THE COURT: Your clients are denying that anyone  
2 told them that. No one has given any testimony that  
3 Mr. Semencic pulled a gun, meaning directed a gun at him.

4 What the interpretation -- hold on. Let me  
5 finish --

6 MR. COSTELLO: Sure.

7 THE COURT: -- for the fifth time.

8 MR. COSTELLO: Go ahead.

9 THE COURT: The premise of the question about pulled  
10 a gun, a conclusory word, that is not in any of the statements  
11 or any of those officers have testified about. You can get  
12 testimony from the officer -- hold on, please. Let me finish.

13 You can get testimony from the officer, if he  
14 answers the question whether anybody told him that  
15 Mr. Semencic had pulled a gun on someone, and the answer is  
16 yes, you can ask him about what he made of that or how he  
17 interpreted or why he did what he did. But at this point, he  
18 has not testified, to my knowledge, that anyone told him that  
19 Mr. Semencic, quote-unquote, pulled a gun.

20 And you moved on when I gave you a chance to ask  
21 what was he told, when I wouldn't let you use the word  
22 "menacing." So you can elicit any facts you want about what  
23 he was told, but they have to be specific factual words. They  
24 can't be legal conclusions, and they can't be words that he  
25 hasn't adopted yet. All right?

1 MR. COSTELLO: Can I go now?

2 THE COURT: You may.

3 MR. COSTELLO: Okay. I believe that Mr. Maloney  
4 said that there were three statements that he made. One to  
5 Officer DiConza, which is the one that DiConza wrote, "pointed  
6 a gun."

7 A second one, I don't know the name of the officer,  
8 which he said he pulled a gun. And the statement that -- the  
9 firehouse statement that he wrote out himself that said  
10 Mr. Semencic pulled a gun.

11 THE COURT: Right.

12 So the only factual question is not what Mr. Maloney  
13 wrote at the firehouse. The jury has to decide what facts  
14 were available to the officers at the moment the plaintiff was  
15 arrested and his home was searched that gave him probable  
16 cause.

17 MR. COSTELLO: His home wasn't searched.

18 THE COURT: Regardless, the moment he entered his  
19 home and seized his firearms on consent or otherwise.

20 MR. COSTELLO: Yes.

21 THE COURT: All right. So for purposes of the false  
22 arrest count, which is what these "pull a gun" questions go  
23 to, the question is simply what were these officers told at  
24 the scene.

25 You can later argue from Mr. Maloney's statements to

1 the police officers that came out about what they were told,  
 2 but the testimony here that the jury can hear is what they  
 3 were told at the scene. So you are welcome to ask and have  
 4 any of those questions answered. But what he said later at  
 5 the firehouse, unless this witness is going to testify that he  
 6 took the statement and what he recalls he was told at the  
 7 scene is all that they get to here, okay?

8 MR. COSTELLO: Okay.

9 (Sidebar conference ends.)

10 (Proceedings continue on the next page.)

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1 (Proceedings continue in open court.)

2 THE COURT: Go ahead. You may proceed.

3 BY MR. CARNEVALE:

4 Q Lieutenant, at some point in that evening were you told  
5 by other officers what had happened?

6 A Yes.

7 MR. STAPLETON: Objection.

8 THE COURT: That's okay.

9 Sustained as to form. Can you fix the time frame in  
10 the evening that you are talking about?

11 Q After you arrived at 527 Dogwood Avenue, did your other  
12 officers fill you in on what had happened?

13 A Yes.

14 Q And what did they tell you happened?

15 MR. STAPLETON: Objection. Hearsay.

16 THE COURT: Let me ask one predicate question.

17 Were you involved in the decision to place  
18 Mr. Semencic under arrest, or had that already been done by  
19 someone else either when you were there or before you got  
20 there?

21 THE WITNESS: Ultimately, it was my decision once I  
22 got there, but he was already pretty much in custody with  
23 the -- after the show-up.

24 THE COURT: Okay. Let me just -- I'm sorry to do  
25 this. Let me see counsel at sidebar, very briefly. And my

1 apologies to the jurors, but I have to make sure that this is  
2 evidence that's proper for you to consider.

3 (Sidebar conference continues on the next page.)  
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1 (Sidebar conference had, as follows:)

2 THE COURT: Okay. So I am not sure that this  
3 evidence falls under any recognized hearsay exceptions because  
4 unless it's a statement by Mr. Semencic, it is not a party  
5 opponent statement. You are offering it for its truth because  
6 you want the jury to believe that what a witness told him  
7 about what happened is true.

8 He is not an individual defendant so his  
9 understanding of the facts that were available as to probable  
10 cause, I believe, is not relevant. The only way under which  
11 it might be relevant is because he is, and, therefore,  
12 potentially covered by an exception to the rules, is that it  
13 goes to his state of mind when he either authorized or made  
14 the decision to arrest Mr. Semencic, and because he is an  
15 employee of the County of Nassau under the state law claims,  
16 the County is liable as their -- as his employer, for any  
17 decision he participated in or made.

18 So I just wanted to get that part of the record  
19 clear -- hold on.

20 But I think that it is an exception to hearsay,  
21 which goes to his state of mind and the information he  
22 believed was true or not true when he made the decision to  
23 authorize the arrest.

24 Do you have any objection in that regard?

25 MR. STAPLETON: Your Honor, I believe he testified



1 that by the time he got there, my client was already in  
2 custody and had -- and I would argue, was already effectively  
3 placed under arrest. He wasn't going anywhere. He wasn't  
4 going to leave.

5 THE COURT: Yeah. I think that's probably  
6 appropriate for cross-examination. It seems a bit ambiguous  
7 to me because there was some testimony that he was already on  
8 the porch, it wasn't clear if he was in handcuffs, and by  
9 "cross" I mean the redirect. And there was some other  
10 testimony that he was in the car, wasn't entirely clear where  
11 Mr. Semencic was and what his custodial state was when he  
12 arrived.

13 So I will let you explore that, but I think I am  
14 going to permit the question because it goes to what this  
15 officer knew when he, in some respect, participated in the  
16 decision to arrest.

17 I will say to Mr. Carnevale, the more precise you  
18 can be about what he was told when, and where it related to  
19 the decisions that were made at the scene I think would help  
20 clarify the relevancy for the jury, all right?

21 MR. STAPLETON: Thank you.

22 (Sidebar conference ends.)

23 (Proceedings continue on the next page.)

24

25

1 (Proceedings continue in open court.)

2 THE COURT: Okay. I am going to overrule the  
3 objection, but just for clarity, we are going to have  
4 Mr. Carnevale begin where he left off and re-ask the question.

5 MR. CARNEVALE: Is it possible that I can have my  
6 last question read back?

7 THE COURT: Yes. We will have to go back a bit  
8 because of the sidebar, but I am happy to do that. I think  
9 you're going to need the last two questions. I think it  
10 starts with "after you arrived."

11 (Record read by the reporter, as requested.)

12 THE COURT: I'm just going to slightly modify that  
13 ruling and sustain it as to form. So if you can just be a bit  
14 more precise in that question, and then you may proceed on the  
15 subject we discussed.

16 (Short pause.)

17 MR. CARNEVALE: I apologize for the delay.

18 Q What was known to you at the time -- withdrawn.

19 What was known to you about the incident at the time  
20 you made the decision to arrest Mr. Semencic?

21 MR. STAPLETON: Objection, Your Honor. There's been  
22 no -- objection.

23 THE COURT: Okay. Overruled.

24 If you participated or made the decision to arrest  
25 Mr. Semencic, you can answer, but, if not, you can so advise.

1 A I was -- collectively, yes. I was involved in the  
2 decision to have him arrested.

3 THE COURT: Okay. Let me have you just break that  
4 down a little bit and explore that process with him first, and  
5 then we can get into the other area you were addressing.

6 Q Did you make that decision before or after Mr. Semencic  
7 was placed in handcuffs by the police car?

8 A Before.

9 Q And at that point, was Mr. Semencic outside of the house?

10 A Yes.

11 Q At that point, had you searched the basement safe?

12 A No.

13 Q So at that point, what was known to you about the  
14 incident?

15 A That there was a volunteer firefighter collecting money  
16 for their fund, and that the defendant had come outside and  
17 displayed a weapon that put him in fear for his life.

18 Q And displaying a weapon to put someone in fear of their  
19 life is a crime; is that correct?

20 MR. STAPLETON: Objection, Your Honor. We have been  
21 over this.

22 THE COURT: We have. Several. Please don't do that  
23 again.

24 Excuse me. The objection is sustained.

25 Q Okay. Eventually, officers went in the basement to the

1 safe; is that right?

2 A Yes.

3 Q And they knew to go in the basement because Mr. Semencic  
4 told them that's where the guns were?

5 A Yes. And the permit.

6 Q And he had no problem telling you that because he had a  
7 permit, right?

8 MR. STAPLETON: Objection, Your Honor. The  
9 characterization.

10 THE COURT: Sustained.

11 Q Someone who has a firearm permit is allowed to have  
12 pistols, right?

13 A Yes.

14 Q And they are allowed to have longarms?

15 A Yes.

16 Q In fact, you don't actually need a permit for longarms?

17 A Correct.

18 Q But you can't use any of those firearms to threaten  
19 someone; is that right?

20 A Correct.

21 Q And at the point you made the decision to place  
22 Mr. Semencic under arrest, is that what was known to you?

23 A Yes.

24 Q Were you involved in the transport of Mr. Semencic to the  
25 5th Precinct?

1 A No.

2 Q Were you at the 5th Precinct when Mr. Semencic was there?

3 A Eventually. I don't know if I was there right away when  
4 he got there.

5 Q Is it a standard procedure of the police department to  
6 ask someone who's arrested questions about their health?

7 A Yes.

8 Q And up until that point when he was at the precinct, was  
9 he ever placed in an interrogation room?

10 A No.

11 Q When he was at his house, was there an interrogation  
12 happening?

13 A No.

14 Q So it wasn't necessary to read him his rights at that  
15 point, was it?

16 A No.

17 MR. STAPLETON: Objection, Your Honor.

18 THE COURT: Overruled.

19 Q Did you ever interrogate --

20 A No.

21 Q -- Mr. Semencic?

22 And you didn't have to interrogate him because he  
23 was, in fact, fully cooperating with the arrest; is that  
24 right?

25 A Yes.

1 Q Thank you.

2 MR. CARNEVALE: I don't have any more questions.

3 THE COURT: Redirect?

4 MR. STAPLETON: None, Your Honor.

5 THE COURT: All right. Thank you, sir.

6 THE WITNESS: Thank you.

7 THE COURT: You are excused.

8 (Witness excused.)

9 THE COURT: Does plaintiff have any additional  
10 witnesses to call or evidence to present, including any  
11 stipulated facts that you would like read to the jury at this  
12 point?

13 MR. STAPLETON: Your Honor, we have no more  
14 witnesses to call, and I believe all of the stipulated facts  
15 I'd like known to the jury have already been made known to the  
16 jury.

17 THE COURT: Okay. All right. Any further evidence  
18 to present or does plaintiff rest at this point?

19 MR. STAPLETON: Plaintiff rests.

20 THE COURT: All right. Thank you.

21 Ladies and gentlemen, we are now going to take a  
22 short break. We're going to do our morning break a bit early.  
23 I will have you come back in 15 minutes, at 11:20, and we'll  
24 be ready to proceed at that point. Thank you.

25 (Jury exits the courtroom.)

1           (Proceedings continue in open court; no jury  
2 present.)

3           THE COURT: Okay. Let's take a five-minute break.  
4 We're going to try to get Mr. Semencic's video feed set up. I  
5 apologize, Mr. Stapleton, to your client. But it takes five  
6 to seven minutes, it can be loud, so I didn't want to  
7 interrupt the proceedings to do that. But we'll have him back  
8 on before I hear any motions either party would like to make  
9 at the close of the plaintiff's case, and anything else you  
10 need to address before we bring the jurors back in, all right?  
11 Thank you.

12           (Recess taken.)

13           THE COURT: Let's go back on the record.

14           Do I have an application from either party for a  
15 motion under Rule 50 or otherwise?

16           MR. STAPLETON: None from the plaintiff.

17           THE COURT: From the defense?

18           MR. COSTELLO: Yes, Your Honor.

19           THE COURT: Let me have you stand where the mic is.

20           MR. COSTELLO: Your Honor, we move for a directed  
21 verdict on the issue of probable cause to arrest based upon  
22 what I would consider overwhelming evidence by both the  
23 volunteer firemen, the two officers, three officers now, all  
24 of whom testified that they knew that the plaintiff had  
25 displayed a weapon and that the complaining witness was put in

1 fear of his life.

2 He testified that he was backing up with his hands  
3 down, telling the plaintiff "it's not necessary, bro," I think  
4 was the exact statement.

5 So on that basis, we move for a directed verdict on  
6 those issues that --

7 THE COURT: So you mean on the plaintiff's false  
8 arrest claim under 1983 and the false arrest claim under state  
9 law, both on the ground, as I understand it, that no  
10 reasonable jury even hearing the evidence in the light most  
11 favorable to the plaintiff, could find that the officers  
12 lacked probable cause to arrest him.

13 MR. COSTELLO: Yes. Thank you.

14 THE COURT: Okay. And is it based on the menacing  
15 count, on the criminal possession of a weapon count, or both?  
16 And why don't you address both specifically, the elements of  
17 both.

18 MR. COSTELLO: Both, Your Honor.

19 THE COURT: Okay. Tell me why. What elements do  
20 you -- why do you think the officers had probable cause for  
21 each of those?

22 MR. COSTELLO: Well, which one do you want me to do  
23 first?

24 THE COURT: Well, you have to do the facts on both.  
25 So you can do either one.



1 MR. COSTELLO: Okay. With respect to the officers'  
2 knowledge at the time they placed Mr. Semencic under arrest,  
3 they knew that he had a Glock weapon, they had recovered the  
4 weapon, the weapon had a magazine in it with live rounds, and  
5 that's enough for criminal possession of a firearm.

6 Now, ultimately --

7 THE COURT: Hold on one second.

8 Criminal possession of a weapon, if it's licensed --

9 MR. COSTELLO: In the fourth degree.

10 THE COURT: -- in the fourth degree, doesn't it  
11 require, let me pull up the elements that you all agreed to,  
12 doesn't it require that not only does he knowingly possess a  
13 dangerous or deadly instrument or weapon, but, also, that the  
14 officers have probable cause to believe that he had intent to  
15 use the same unlawfully against another. Those are the  
16 elements you all stipulated to that are in the jury  
17 instructions.

18 So what are the facts from which the officers had  
19 probable cause to believe that he had intent to use the same  
20 unlawfully against another.

21 MR. COSTELLO: The fact that he displayed this  
22 weapon to a volunteer firefighter, knocking on the door with  
23 the weapon, is what caused this fireman to be in fear of his  
24 safety, and caused him to retreat as he did.

25 THE COURT: So if I understand it, your view is that

1 if the officers were told that when they arrived at the scene  
2 by Mr. Maloney or someone else, that the plaintiff had tapped  
3 on the "no peddler" sign while holding the gun, that that  
4 gives them probable cause to arrest him for CPW in the fourth  
5 degree because that indicates an intent to use that weapon  
6 unlawfully against Mr. Maloney.

7 MR. COSTELLO: Well, by placing him in fear of his  
8 life. When you say use the weapon, doesn't have to be fired.

9 THE COURT: I know. I am not saying it has to be  
10 fired. I am just reading the language of the elements that  
11 you all stipulated to. Under New York law, a person is guilty  
12 of CPW in the fourth degree when the person knowingly  
13 possesses any, and I will skip the razors and another  
14 elements, but dangerous or deadly instrument or weapon, no  
15 dispute a Glock qualifies, second, with intent to use the same  
16 unlawfully against another. And then the third element, which  
17 I think is not disputed, but plaintiff's counsel can correct  
18 me if I am wrong, is that it must be operable.

19 So I want to understand why you think no reasonable  
20 jury could find that Mr. Semencic did not have the intent to  
21 use that weapon unlawfully against Mr. Maloney, even if they  
22 fully credit plaintiff's testimony, which for purposes of Rule  
23 50, I have to presume that the jury would credit or draw any  
24 reasonable inferences from Mr. Semencic's testimony.

25 MR. COSTELLO: Well, first of all, Your Honor, I

1 think that in order for the jury or the Court to find that  
2 there was probable cause to arrest Mr. Semencic, it doesn't  
3 have to be for one or the other. Either one of those  
4 violations is enough to arrest him.

5 And without a doubt, the menacing charge, because he  
6 displayed the weapon and put -- he's not our client, put the  
7 firefighter in fear of his life, backing up with his hands up,  
8 saying, "that's not necessary, bro," that is sufficient.

9 THE COURT: Okay.

10 MR. COSTELLO: If you prove it on one --

11 THE COURT: So let's turn to the menacing charge.

12 So on the first element of menacing, there's two  
13 required elements, because it is an "and." A person commits  
14 the crime of menacing in the second degree when he, one,  
15 intentionally places or attempts to place another person in  
16 reasonable fear of physical safety, serious physical injury,  
17 or death.

18 Is your argument that even if the jury credits  
19 Mr. Semencic's testimony, which for Rule 50 I have to presume  
20 that they will, if they are entitled to do so, that he didn't  
21 realize the gun was in his hand, and tapped on the door to  
22 tell him to go away, or even just that he tapped the sign,  
23 that no reasonable jury could find that he was not  
24 intentionally placing Mr. Maloney in fear for his health or  
25 safety? Tell me your argument there.

1 MR. COSTELLO: The answer is yes.

2 When you tap on this sign on the door with a weapon  
3 in your hand, it's not a small weapon, with a weapon in your  
4 hand, tapping on the glass, there's a message there. You get  
5 away from here. It says no peddling. I don't want you  
6 around, and I have a gun in my hand.

7 That's enough to place somebody, any reasonable  
8 person, in fear of their life, which is why our firefighter  
9 reacted the way he did with his hands in the air, backing up.

10 THE COURT: Okay. Thank you.

11 Any other Rule 50 you would like to make at this  
12 time on any of the other --

13 MR. COSTELLO: Sorry. You're a little close to the  
14 mic.

15 THE COURT: Sorry.

16 Any other Rule 50 motion you'd like to make with  
17 respect to any of the other counts that will go to the jury?

18 MR. COSTELLO: I don't think so, Your Honor.

19 THE COURT: Okay. Thank you.

20 Mr. Stapleton, any response from you?

21 MR. STAPLETON: Yes, Your Honor.

22 I believe the motion should be denied because -- for  
23 several reasons.

24 First of all, under Rule 50, you do have to construe  
25 those facts in my client's favor. And his testimony was that

1 with respect to the CPW4, the criminal possession of a weapon  
2 in the fourth degree charge, that he had no intention of ever  
3 using the firearm against Mr. Maloney.

4 So I believe that for that -- and I believe a  
5 reasonable jury could credit Mr. Semencic's testimony in that  
6 regard, and, therefore, that motion should be denied.

7 With respect to the menacing --

8 THE COURT: I think the question, though, let me ask  
9 you, is at the -- with respect to the false arrest claim,  
10 because the only question is not what Mr. Semencic  
11 subjectively intended, though the jury could credit that, the  
12 officers weren't mind readers. They don't know, and  
13 Mr. Maloney wasn't a mind reader and doesn't know what he  
14 intended. The question is why a jury could credit from the  
15 facts that your client described that the officers, or,  
16 really, the facts that Mr. Maloney reported to them, that the  
17 officers did not have probable cause to believe that  
18 Mr. Semencic intended it. Do you see what I'm saying? That  
19 from the perspective of the officers, there was at least some  
20 version in which they lacked probable cause to believe that he  
21 intended to harm Mr. Maloney, at least without further  
22 investigation.

23 So tell me why you think the jury could find for  
24 your client in that respect from the perspective of the  
25 reasonable officer in the field.

1           MR. STAPLETON: Well, Your Honor, I think because  
2 virtually every fact in this case is disputed, and virtually  
3 the fact that my client himself testified that he was placed  
4 under arrest inside of his house, you know, we have two  
5 different versions of every event in this case. The police  
6 officers say that they spoke to Mr. Maloney beforehand, spent  
7 about 20 minutes with him. But my client says that he was  
8 arrested in his home. And the jury could also credit entirely  
9 the testimony of Mr. Salzman, who said that when he was there,  
10 he saw police officers go up to the house, they spent a minute  
11 or two in front of the front door, and then they went in.

12           And it was only after they went in that some other  
13 officers came over to speak with Daniel Maloney and Robert  
14 Fineo at the corner. And if you credit, as you must for the  
15 purposes of this particular motion, it's reasonable to infer  
16 that he was arrested inside his home before the officers who  
17 actually physically put him in custody had ever even spoken to  
18 Daniel Maloney. So I think that needs to be considered.

19           THE COURT: Okay. Let me ask -- I was going to  
20 raise this question of the location of the arrest and the  
21 warrant requirement with defense counsel next.

22           Let me ask defense counsel. If I understand it  
23 correctly, the defense is not disputing, obviously, black  
24 letter law, that you need a warrant to arrest a person inside  
25 their home, unless there is -- one of the limited exceptions

1 to the warrant requirement applies.

2 My understanding, but please let me know if I am  
3 wrong, is that your clients are not claiming that an exception  
4 applied, they are claiming that as a factual matter the arrest  
5 occurred outside the home and they had probable cause to  
6 arrest him outside his home; is that correct?

7 MR. COSTELLO: That's correct, Your Honor.

8 THE COURT: All right. So in light of that, and  
9 also for other reasons I will detail briefly, I am going to  
10 deny the Rule 50 application since there's a key factual  
11 dispute for the jury to resolve about the location of the  
12 arrest, which is central to the plaintiff's false arrest  
13 claim, and if they were to credit Mr. Semencic's testimony  
14 over the other -- certain other witnesses as to whether the  
15 arrest took place inside the home, since the defense is not  
16 claiming that exigency or another exception applied inside the  
17 home, the jury would be entitled to find for the plaintiff on  
18 both the federal and state false arrest claims. And that is a  
19 question we will leave to the jury. But thank you all.

20 Okay. Is your next witness here? Defense witness.

21 MR. COSTELLO: That's the next topic.

22 THE COURT: Okay. Yes.

23 MR. COSTELLO: I think it was yesterday I told you  
24 that we might be calling two people.

25 THE COURT: Yes.

1 MR. COSTELLO: We reviewed the evidence and talked  
2 about it, and decided that we would only call one person.

3 Then when we contacted that person, we found out  
4 that -- what's it -- officer what?

5 MR. CARNEVALE: Gerrato.

6 MR. COSTELLO: Captain Gerrato has, I think it is  
7 called, norovirus, which is really --

8 THE COURT: Don't have him bring that here, please.

9 MR. COSTELLO: It is highly contagious. It causes  
10 you to be near a bathroom constantly.

11 THE COURT: Yeah, we don't need to make a record on  
12 that. He's not coming in here with norovirus.

13 MR. COSTELLO: I didn't think you wanted him.

14 THE COURT: No.

15 MR. COSTELLO: So what I would propose, and I spoke  
16 to plaintiff's counsel about this, is that we adjourn now.

17 I don't think, in light of the norovirus, we're  
18 ultimately going to call him. But we will speak to him  
19 Friday, Saturday, or Sunday, and let Mr. Stapleton know. I  
20 will get his phone number and tell him whether we are going to  
21 call. But we should, I presume, on that schedule, then sum up  
22 on Monday.

23 THE COURT: So, wait. Is he not available by video?  
24 Is he too ill to -- because of the nature of his condition, to  
25 testify today?



1 MR. COSTELLO: At the moment he's --

2 THE COURT: Understood.

3 MR. COSTELLO: -- unavailable.

4 THE COURT: Indisposed. Now I understand. Thank  
5 you.

6 So here's what I propose to tell the jury. I'm  
7 going to let them know that the plaintiff has rested, that  
8 defense has potentially one other witness to present, but that  
9 that witness is ill, and having heard more about the nature of  
10 the illness. I am not going to ask him even to testify by  
11 video. We will adjourn until Monday morning. We will see how  
12 he's feeling. We will either hear from that witness, and the  
13 jury should draw no inference one way or the other as to  
14 whether the witness testifies or not. I can tell them that  
15 then. We will see what happens. And then we will have  
16 closing arguments and let them begin deliberations on Monday.

17 MR. COSTELLO: Good. Acceptable.

18 THE COURT: That's fine.

19 Let me also -- have a seat. You all can have a  
20 seat.

21 Let me also just note one thing for the record,  
22 which is our deputy informed me that as she was taking the  
23 jurors to a break, one of the jurors asked her a quasi  
24 substantive question that she appropriately did not answer and  
25 just said she would refer it to me, along the lines of that

1 juror was confused as to who initiated or started the case.

2 I think the confusion may be in part because there  
3 was some talk about paperwork at the stationhouse about  
4 initiation of the criminal charges, then there was some  
5 reference in the last witness' testimony to referring to  
6 Mr. Semencic as the defendant. I know that he was talking  
7 about him being a criminal defendant not a plaintiff in a  
8 civil case.

9 Normally, I would not advise the jury on any of  
10 this, but it does occur to me that a question was raised. I  
11 should say to the jurors, you know, you shouldn't ask any  
12 substantive questions to the deputy, certainly not to one  
13 another or to anyone else. Not to discuss the case at this  
14 juncture. I will give you lots more jury instructions prior  
15 to your deliberations, the lawyers will explain much more  
16 about the legal claims in closing arguments.

17 But just since I'd already instructed them on this,  
18 simply to say something along the lines of, as a general  
19 matter, you have heard testimony about a criminal proceeding  
20 against Mr. Semencic, and a civil proceeding against  
21 Mr. Semencic.

22 The criminal proceeding began --

23 MR. COSTELLO: For Mr. Semencic.

24 THE COURT: Excuse me. A civil proceeding initiated  
25 by Mr. Semencic. Two proceedings in this case. One is a

1 criminal proceeding, the other is a civil proceeding.

2 The criminal proceeding was initiated by police  
3 officers employed by Nassau County in 2016. That case was  
4 dismissed, and Mr. Semencic was not convicted of any crime.  
5 That's a stipulated fact in 2018.

6 Thereafter, Mr. Semencic initiated himself a civil  
7 lawsuit against the individuals who are charged here. That is  
8 the case that you are hearing. So Mr. Semencic is the  
9 plaintiff in the civil lawsuit, the defendants are the two  
10 individual police officers, as well as Nassau County, and I  
11 will give you further instructions on that at the time of your  
12 deliberations.

13 Do you think it would be appropriate for me to frame  
14 that for them now, or would you prefer that I simply wait  
15 until we get to the instructions? It does occur to me it  
16 might be helpful for them to understand that now before they  
17 hear your summations, but that's also something you can do in  
18 your summations, if you prefer.

19 MR. COSTELLO: Your Honor, was the inquiry when did  
20 this case, meaning the civil case, start?

21 THE COURT: It was -- as I was told, it was, in  
22 general, a juror said to the deputy, "I'm confused about who  
23 initiated the case or what case."

24 And so I don't know, because I certainly didn't  
25 speak to the juror, and the deputy, appropriately, did not

1 engage any further. So I don't want to get into -- we  
2 couldn't voir dire the juror, but I think that's excessive at  
3 this point. So the question is simply, do I say I wanted  
4 to -- without saying there was a juror question or anything  
5 like that, simply to say, I wanted to clarify, because you've  
6 heard some testimony about different legal proceedings in this  
7 case, the context in which this case arises, and then I can  
8 say, there was this other case, now there's the civil case.  
9 Along those lines.

10 MR. COSTELLO: Our suggestion, Your Honor, would be  
11 in light of the question, to simply tell them when this case  
12 originated.

13 THE COURT: Okay.

14 MR. COSTELLO: And not make any statement about any  
15 other case. I think that's responsive to the question by the  
16 juror, as I understand it.

17 THE COURT: I don't know if it's responsive to the  
18 question by the juror because --

19 MR. COSTELLO: We could ask.

20 THE COURT: Well, no, I don't want to ask the juror  
21 about his question because I don't want to engage in a back  
22 and forth with an individual juror with questions that that  
23 person may have, and have that jury get other information.  
24 Voir dire of a juror is really more appropriate when there's  
25 some discussion of an outside taint and something we need to

1 find out to decide if we should excuse the juror, and that's  
2 not what's happening here.

3 So I think if I'm going to say -- I think the  
4 reason -- what's your concern about me simply saying there was  
5 a criminal proceeding that is terminated, you are here for  
6 purposes of a civil matter?

7 MR. COSTELLO: As we've said numerous times, the  
8 criminal case was terminated for procedural or technical  
9 errors, not for any findings on the merit that implicated any  
10 police misconduct.

11 That's what we're afraid of, that they're going to  
12 speculate -- when you say the criminal case was dismissed, a  
13 juror is naturally going to say, why was it dismissed?

14 THE COURT: Okay.

15 MR. COSTELLO: It must be the police, you know.

16 THE COURT: I have ruled on that already. The  
17 fact -- the history of the criminal proceeding, insofar as the  
18 charges were brought, and insofar as it was dismissed, are  
19 stipulated facts. The jury is hearing those facts.

20 I have already ruled, and I will repeat again,  
21 briefly, the longer ruling is part of the record, that  
22 favorable termination is an element of the plaintiff's  
23 malicious prosecution and abuse of process claims. That  
24 element is not disputed, the jury will hear those facts. The  
25 reasons why it was dismissed are not relevant and are improper

1 and prejudicial for either party to argue.

2 I am instructing you again, in your summations, that  
3 neither party shall say anything about the reasons why. They  
4 may simply note that it was terminated, if they choose to do  
5 so. That is a fact.

6 They cannot argue the reason they dropped it is  
7 because there was no basis to bring it in the first place,  
8 they cannot argue it is because he was innocent, they cannot  
9 argue it is because it was a technicality. The only question  
10 is whether those officers had probable cause to arrest the  
11 plaintiff on those offenses at the moment they did so. That's  
12 it. Okay?

13 I don't think it is prejudicial to talk to them  
14 about a stipulated fact in the procedural context, but if  
15 defendants are objecting still, in light of that, I won't say  
16 anything, and then in your summations you may simply say,  
17 here's why we're here today, this is a civil lawsuit, it is  
18 how people resolve their disputes in civil proceedings. This  
19 is -- you know, whatever you want to say about it.

20 In terms of the order of summations, since the  
21 plaintiff has the ultimate burden, my practice is to have him  
22 go second. So defendants will begin, and the plaintiff will  
23 go second, all right?

24 Let's bring in the jurors, and I will excuse them  
25 for the day, and have them come back Monday morning. Thank

1 you.

2 (Jury re-enters the courtroom.)

3 THE COURT: All right. Everyone can be seated,  
4 please.

5 Members of the jury, we are moving things rapidly  
6 along. I am going to dismiss you for the rest of the day  
7 because we have only potentially one witness left to testify.

8 The plaintiff, Mr. Semencic, through his lawyer, has  
9 now rested, meaning he has no further witnesses or evidence to  
10 present.

11 This is now an opportunity for the defense, if they  
12 choose to present any witnesses or evidence, since the  
13 ultimate burden in this civil case rests with the plaintiff,  
14 the defense has no obligation to present any witnesses. There  
15 is one witness that they may present. He has unfortunately  
16 fallen ill, and I will spare you the details, but simply to  
17 say he's not in a condition, though he should be fine, to  
18 testify even by video.

19 So we are going to adjourn until Monday. We may  
20 hear from an additional witness then, we may not. But, either  
21 way, Monday morning, we will turn to the lawyers' closing  
22 arguments, then I will give you some instructions on the law,  
23 and on the process of your deliberations, and then we will  
24 allow you to retire to the jury room, to finally begin your  
25 deliberations.

1           We have no trial tomorrow. As always, let me tell  
2 you again, you have several days before I see you again.  
3 Please, please, please, do not discuss the case with anyone.  
4 Don't talk to your family, your friends. Do not blog about  
5 it, tweet about it, post about it, anything.

6           All you can say is, we are still on trial. We  
7 should be wrapping up the trial portion Monday and beginning  
8 our deliberations, for people in your life who need to know  
9 your schedule.

10           But thank you again very much for your time and  
11 attention. Our system of justice really depends on you. And  
12 on behalf of all the lawyers and the parties, we all  
13 appreciate it very much.

14           So I will let you adjourn, and we will see you here  
15 a little bit before 10:00 on Monday, and we will get started  
16 promptly at 10:00.

17           Thank you.

18           (Jury exits the courtroom.)

19           (Proceedings continue in open court; no jury  
20 present.)

21           THE COURT: Okay. The jurors have left the  
22 courtroom.

23           Let's do this. Why don't we break until about noon.  
24 I want to give you all a chance, because I know we sent it to  
25 you late last night to take another look at the jury charge.



1 I have a few questions for you. There are some instructions,  
2 I think, in light of our colloquy over the Rule 50 motion, I  
3 might be able to pare down as unnecessary because they may  
4 relate to claims and defenses that have not been -- are not  
5 raised.

6 But let's reconvene at noon, and we'll proceed with  
7 the jury charge at that point.

8 Thank you all.

9 (Recess taken.)

10 THE COURT: We are about to begin the charge  
11 conference.

12 In light of our discussion about the false arrest  
13 claim, I went back and looked at the charge on that one in  
14 particular, and I have a couple changes to propose that I  
15 think will be more accurate and clear and streamline the  
16 jury's inquiry. But let me -- why don't we just go page by  
17 page, and if anybody has objections or suggestions, please  
18 keep in mind, of course, that I reviewed each of your proposed  
19 draft charges, and where I thought that your suggestions were  
20 accurate and appropriate, I tried to incorporate them. But  
21 any specific objections you want to note for the record, I am  
22 welcome to hear them, as well as constructive suggestions.

23 So where is everyone's first comment? Mine begins  
24 at page 19. But if anyone has anything before then, let me  
25 know.

1 MR. COSTELLO: Is that page 19?

2 THE COURT: Yes. You are going to do this on your  
3 phone? This is going to be interesting.

4 Okay. So turning to page 19, right after I do the  
5 elements of menacing and CPW, I had written something, which  
6 this morning I realized is not accurate, in light of the  
7 factual dispute over whether the arrest was in the home or  
8 outside the home. Namely, I had written in this draft, as  
9 usually one does in a false arrest claim, where there's not a  
10 question about a warrant or an exception to the warrant  
11 requirement, that if there was probable cause to arrest the  
12 plaintiff for either of those two charged offenses, then the  
13 verdict must be for the defendants. That's not actually  
14 accurate because, as all parties know, even if the jury finds  
15 there was probable cause, if they make a factual finding that  
16 it was inside the home, then it was unlawful. Of course, the  
17 contrary is also true, if they agree with the defendants that  
18 it was outside the home, then the issue is just whether there  
19 was probable cause for one or both, but really just one of the  
20 charged crimes, in which the case the verdict must be for the  
21 defendants. So I rewrote it to clarify that.

22 So I am going to, unless there is an objection,  
23 replace the paragraph that begins "if you find that there was  
24 probable cause," simply to say, "it is your job as jurors to  
25 determine whether the defendants have established by a

1 preponderance of the evidence that they had probable cause to  
2 arrest the plaintiff for either menacing or criminal  
3 possession of a weapon," and I will give the degrees of the  
4 offenses.

5           Then, further down, couple of paragraphs down in the  
6 section marked "warrantless arrest in the home," the paragraph  
7 that begins "if you find that the plaintiff was arrested  
8 inside his home, your verdict will be for the plaintiff on his  
9 claim of false arrest."

10           I will stop there, put a period at the end of that  
11 sentence, cut out the part I had written about exigency since  
12 the defendants are not claiming exigency, as counsel clarified  
13 earlier, and simply say I instruct you that if the defendants  
14 conducted a warrantless arrest inside the plaintiff's home,  
15 their actions were unlawful, even if they had probable cause  
16 to believe the plaintiff committed a crime. However, if you  
17 find that the plaintiff was arrested outside his home,  
18 defendants must show only that they had probable cause to  
19 arrest the plaintiff at the time they did so.

20           If you find that plaintiff was arrested outside his  
21 home and that the police had probable cause for the arrest,  
22 your verdict on this claim will be for defendants.

23           Any concerns or objections to that part?

24           MR. COSTELLO: No, Your Honor.

25           THE COURT: Okay. Great.

1           Then on page 21, I'm going to take out the paragraph  
2 that begins "another exception on the search warrant is  
3 exigency," because as I understand it, the defendants are  
4 claiming the consent exception to the warrant requirement, but  
5 they are not claiming exigency; is that correct?

6           MR. COSTELLO: That is correct.

7           THE COURT: Okay, good.

8           I put it in there out of an abundance of caution,  
9 but I will take out that and other exception paragraph.

10           And then below, in the "if you determine" and the  
11 "however, if you determine" paragraphs, I will take out the  
12 references to exigency there. I had some clauses that say "if  
13 the defendants fail to establish exigent circumstances," and  
14 then below that, "or there were exigent circumstances  
15 justifying the warrantless entry," that those can go because  
16 that's not an issue for the jury to consider here.

17           Okay?

18           All right. I had a couple other questions, but that  
19 was the only -- those were the only changes I proposed to  
20 make. Does anyone else have any changes they want to propose?

21           MR. STAPLETON: No, Your Honor. I was going to  
22 address that the -- you have addressed my concern regarding  
23 anything about exigency.

24           THE COURT: Okay. Anything from defense counsel?

25           MR. COSTELLO: No, Your Honor.

1 THE COURT: Okay. Wow. Remarkably fast.

2 Let me just clarify one thing. On the malicious  
3 prosecution claim, if you turn to page 27, there are the four  
4 elements of malicious prosecution. First, initiation or  
5 continuation, I'm paraphrasing, termination in the plaintiff's  
6 favor, malice, and lack of probable cause.

7 My understanding is that the third and fourth  
8 elements are vigorously disputed, but that the first and  
9 second are not, in that I think based on the testimony, there  
10 was no dispute that both McGrory and Magnuson filled out the  
11 information which counts as initiating the charges. I know  
12 that they are arguing that they didn't commit -- or aren't  
13 liable for the tort of malicious prosecution because there was  
14 no malice and there was probable cause, but do defendants have  
15 a problem with me instructing the jury that the initiation  
16 element is met?

17 MR. COSTELLO: Can you repeat that?

18 THE COURT: Sure.

19 On the first element, malicious prosecution, the  
20 first element is that the defendant initiated or continued a  
21 prosecution against the plaintiff.

22 I think the law is clear that filling out a criminal  
23 information by a police officer counts as initiation of  
24 criminal prosecution. We occasionally have cases where the  
25 jury has to decide if the officer, who didn't swear out the

1 information, but nonetheless met with the DA and encouraged  
2 the prosecution, satisfied the element of continuation. Here,  
3 I don't think that's an issue because I think, if I remember  
4 correctly, McGrory and Magnuson each acknowledged that they  
5 had sworn out the information.

6 Is that correct?

7 MR. STAPLETON: Yes.

8 THE COURT: All right. So my question for the  
9 defendants is, do you have any concern with me or any  
10 objection to me instructing the jury that the first element  
11 here, initiation, is met because there is no dispute that  
12 these officers --

13 MR. COSTELLO: No, Your Honor.

14 THE COURT: Okay. Great. That will make it faster.

15 MR. COSTELLO: And you are not going to say number  
16 two?

17 THE COURT: No, I am going say that it was  
18 terminated in the plaintiff's favor because that's not  
19 disputed. I know we have had this discussion about the  
20 reasons why it was terminated, but there's no dispute that the  
21 prosecution was terminated in the plaintiff's favor when it  
22 was dismissed. Whether it was speedy trial grounds or  
23 something else, that's still a dismissal, and it counts as a  
24 favorable termination under New York law.

25 MR. COSTELLO: For all the reasons that I previously

1 stated, and I don't need to bore you with again, we are just  
2 afraid that the jury is going to infer from that that there  
3 was a finding of police malfeasance somehow.

4 THE COURT: Okay. So I know that you're concerned  
5 about the jury or afraid of the jury inferring something from  
6 it. But the problem is that we often have concerns jurors are  
7 going to speculate about things they are not to speculate  
8 about. That's why we instruct them. So I instruct them, as I  
9 do in this draft charge, not to speculate about innocence or  
10 guilt. That's not their concern. So I've told them that  
11 repeatedly.

12 As for the legal element, the second legal element,  
13 malicious prosecution, the law is clear that a dismissal of  
14 the charges is a termination in the plaintiff's favor.

15 So the question I have for you is, do you have a  
16 ground to say that that instruction, that is me instructing  
17 them that that element is erroneous, if so, you are welcome to  
18 send me some case law, but I have never seen a case saying  
19 that a dismissal for speedy trial reasons or any other is not  
20 a favorable termination.

21 MR. COSTELLO: I understand. I do.

22 THE COURT: Okay. Similarly -- all right. We are  
23 good on initiation or continuation.

24 I think I understand the malice issue.

25 Let me ask you, Mr. Stapleton, on abuse of process,

1 we haven't had testimony on this, it may be an inference you  
2 intend to argue from the testimony. But I am looking at page  
3 30 on the elements of the third element, really, the second  
4 and third, the intent to do harm without excuse or  
5 justification, and that the defendants took these actions in  
6 order to obtain a collateral objective -- objective outside  
7 the legitimate ends of the process.

8 My understanding of the third element has to do, and  
9 I am instructing them, that it is without excuse or  
10 justification an intention to cause harm. So it is more than  
11 just seeking to obtain a conviction, that there has to be some  
12 other collateral objective -- sorry, yes, the collateral  
13 objective. Typically, it is something like avoiding adverse  
14 consequences for discipline, employment, they are embarrassed  
15 that they arrested the wrong guy, or they overreacted, or they  
16 are afraid of something else.

17 Let me just get a proffer from you as to why I  
18 should charge the jury on this particular claim.

19 MR. STAPLETON: Your Honor, there was testimony from  
20 both my client and his wife about the voluntary statement made  
21 by an officer in the basement, to the effect that "we're not  
22 going to do anything wrong. What do you think, we want to  
23 lose our jobs?"

24 THE COURT: Okay. Got it. That's sufficient.

25 Similarly, when we are talking about statements, I



1 did allow, in part, because there weren't objections, each of  
2 you to elicit some questions from the officer witnesses and  
3 Mr. Semencic about Miranda warnings. I don't understand why  
4 Miranda is relevant here. I think it gets inflated something  
5 in the eyes of the jury. There's not a Fifth Amendment claim,  
6 they're not claiming that he made any statements that were  
7 unconstitutionally obtained that they were using against him.

8 I don't understand why arguing that they didn't read  
9 him his rights when he was under arrest is relevant in this  
10 case. So my instinct is to instruct you all to stay away from  
11 that in summations, but tell me if you think there's something  
12 I'm missing.

13 MR. STAPLETON: No, Your Honor. In fact, given your  
14 instruction that we are not to talk about what happened in the  
15 criminal case, or why the criminal case went away. To be  
16 quite frank, I'm not going to talk about that. I'm not going  
17 to mention Miranda. That line of questioning was, indeed,  
18 designed to develop evidence about why his statements were  
19 suppressed, but that's not an issue here at all. So I am not  
20 going to discuss Miranda.

21 THE COURT: I recall that there had been litigation  
22 over that in the criminal case, but I think it is outside the  
23 purview of what this jury has to consider. Let me just be  
24 clear.

25 By saying that you're not to talk about the reasons

1 why the case was dismissed, that's not to say each of you  
2 can't, of course, argue inferences from the testimony about  
3 what actually happened. That is, you are free to argue  
4 Mr. Semencic did not intend, because that's an element of the  
5 probable cause, did not intend to menace anyone, he didn't  
6 intend to put anyone in fear for his safety, he might have  
7 been careless, he might have been whatever, but that's -- you  
8 are free to argue that. And, similarly, defendants are free  
9 to argue the officers were told this, they had these concerns,  
10 they were worried he might be a dangerous person, he's  
11 admitted to you that he was holding the gun when he answered  
12 the door, that he tapped on the sign with the gun. You can  
13 argue about what he actually did.

14 What I don't want is any argument about the charges  
15 were dismissed, therefore, he didn't do it, and they never had  
16 probable cause to begin with, okay?

17 MR. STAPLETON: I will not make that argument.

18 THE COURT: Understood.

19 MR. COSTELLO: Understood.

20 MR. CARNEVALE: Understood.

21 THE COURT: All right. I think that is all I have  
22 for you all.

23 Anything -- let me look real quickly.

24 Anything on the verdict sheet?

25 MR. STAPLETON: Not from the plaintiff, Judge.

1 (Short pause.)

2 MR. COSTELLO: No problem, Judge.

3 THE COURT: All right. Great.

4 Okay. So I will leave you all to the rest of your  
5 Thursday and Friday.

6 Let me just say one more thing about closing  
7 arguments. I didn't get a motion from either party on this,  
8 but my practice, and I know judges have a lot of discretion,  
9 is to allow counsel, if they choose, plaintiff's counsel  
10 specifically, to propose a number of damages they think are  
11 appropriate, and if you are seeking punitive damages, to  
12 propose a number as to the individual officers.

13 I simply suggest that you keep it reasonable, and  
14 speak with your client about what a reasonable number is that  
15 he wishes you to propose, in part, obviously, for your  
16 credibility in the eyes of the jury, but, also, because in  
17 cases where counsel have proposed a number and it is in excess  
18 of what the Second Circuit has determined is an appropriate  
19 damages award, and the jury adopts that suggestion or  
20 something close it, it has led to litigation over remittitur,  
21 new damages trials, and the like. Obviously, it is your right  
22 to propose within reason whatever number you think is  
23 appropriate, but I often tell plaintiff's counsel to speak  
24 with their clients about what is both reasonable under the  
25 circumstances in the eyes of the jury, as well as what is

1 something within the bounds of what the Second Circuit has  
2 allowed, given the injuries and given the nature of the  
3 conduct.

4 So I will let you take it from there.

5 MR. STAPLETON: I appreciate that, Judge.

6 THE COURT: All right. Thank you.

7 Okay. I have nothing further.

8 We are adjourned. I will see you Monday morning.

9 Have a good weekend, everyone.

10 MR. COSTELLO: Thank you.

11 (At 12:20 p.m., the proceedings adjourned until  
12 Monday, March 3, 2025, at 10:00 a.m.)  
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